5 September 1968

Legal Effect of S. 1035 on the Intelligence Activities of CIA

1. A memorandum by the American Law Division of the Library of Congress, dated January 29, 1968, concerning the effect of S. 1035 on the Central Intelligence Agency has been recently filed in the Congressional Record (Cong. Rec., 2 July 1968, pp. S8088 and S8089) after being presented to the Senate Subcommittee on Constitutional Rights.

2. The author of the article has conducted considerable research into the statutes which have a bearing on the Agency and its functions. He also cites several cases which have a bearing on the applicability of various laws and legal principles to the functions of intelligence. Unfortunately, however, the author has not had the same opportunity to research the sensitivities of security agencies generally or of Central Intelligence Agency, specifically. It is the purpose of this paper to acquaint those interested in the subject with the actual issues involved and with certain court rulings in other, perhaps lesser known, legal proceedings. This discussion demonstrates that there are inherent in S. 1035 conflicts with statutes and in fact conflicts with judicial concepts of the necessity for secrecy in intelligence matters.

3. The article refers to a number of statutory provisions which it claims were designed to allow CIA to maintain secrecy concerning its operations and personnel. It cites 50 U.S.C. 403(d)(3) as authorizing the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. That statute places a responsibility on the Director of Central Intelligence for protection of intelligence sources and methods but in fact arms him with no authority to carry out that responsibility.

4. Although 50 U.S.C. 403(d)(3) provides no authority to the Director of Central Intelligence for carrying out the obligation which it places upon him to protect intelligence sources and methods, the Supreme Court has steadfastly held to the view that intelligence is a very special subject. As was stated in the Totten case (Totten v. United States, 92 U.S. 105 (1876)):

> "...all secret employments of the Government in time of war or upon matters affecting our foreign relations, where a disclosure of the service might compromise or embarrass our Government in its public duties, or endanger the person or injure the character of the agent..." cannot be disclosed in a court of law. "A secret service, with liability to publicity in this way, would be impossible;... The secrecy which such

contracts (of employment) impose precludes any action for their enforcement... It may be stated that public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential... greater reason exists for the application of the principle (of not allowing disputes involving state secrets to be aired in court) to cases of contract for secret service with the Government, as the existence of a contract of that kind is itself a fact not to be disclosed."

The Totten case has been repeatedly cited with approval by the Supreme Court. (The most recent case concerning government privileges decided by the Supreme Court was United States v. Reynolds, 345 U.S. 1 (1953) in which Totten was favorably cited. 97 L. ed. 729, 732, 733, 735.)

5. Any suit filed before a court charging a violation of S.1035 would inevitably require assertion of the facts tending to support the violation. These facts are inextricably involved with Agency functions and operations and identities of Agency personnel. On the other hand 50 U.S.C. 403g[section 6 of the CIA Act of 1949, as amended] specifically exempts the Agency from the provisions of any law requiring publication or disclosure of the Agency organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. For example, if an employee stationed abroad

asserted in court a violation of S. 1035 by his superior, the mere identification of the Agency personnel could reveal classified information in violation of the secrecy oath which all employees are required to take, and in itself would be a breach of security contrary to the interests of the United States and possibly endangering lives of people.

6. This then is the crux of the issue--if the CIA is to be subject to suits to prove its innocence or the innocence of one of its officers, as provided in S. 1035, all efforts to maintain the security of its operations become an exercise in futility. It is apparent that when a court action is maintainable concerning the performance of a service for the Government, despite the secrecy required to perform that service, then the service becomes useless because secrecy is its essence. A mere appearance in court could result in possible disclosure of names and employment relationships, the very existence of which are state secrets. If any employee has a statutory right to a court hearing of his grievance, no matter how wrong or how frivolous his suit may be and no matter how strong the case for the CIA is, once that suit is filed a great disservice has been done to the integrity of the Agency's security system and to its ability to operate anonymously, for the public examination into the grievance is a serious breach of security and in many cases may prove hazardous to the lives of certain classes of Agency employees. It must also be noted when discussing facts which may be revealed in court that it is a determination of the court in any given case as to whether a

particular fact is privileged or is a state secret so that it may be withheld. In other words, if the CIA is sued under section 4 of S. 1035 and the name of any employee who is germane to the case is considered by the Agency to be secret information, it becomes the judge's decision whether that name will be revealed. (United States v. Reynolds, 345 U.S. 1 (1953)) (Government privilege annotated in 95 L. ed. 425, 97 L. ed. 735)

7. Under S. 1035 an employee or applicant who felt he had been aggrieved could go into court alleging a violation of S. 1035. The case would then be subject to the jurisdiction of the court. The problems which this would pose are best demonstrated by a recent case in which a suit was brought against the Agency by the widow of an applicant for employment. Her husband was being considered for Agency employment and went through the normal applicant processing. As a result of a regular medical examination, he was informed that his blood pressure was unacceptably high and that if he would bring it under control his case would be reviewed. A few days later he committed suicide. His wife brought suit against the Agency in a Federal court claiming that during the processing drugs had been administered to her husband which had so depressed him that his suicide resulted. No drugs of any sort are administered in Agency processing and the suit was obviously spurious. To prepare for a defense, however, it was necessary to obtain affidavits from those members of the Office of Security, Office of Personnel and Office of Medical Services who had been in any way involved in the processing.

The very filing of these affidavits in open court would have caused the "publication" of "functions, names [and] official titles" of certain CIA personnel--the very information which the Congress sought to protect by section 6 of the Central Intelligence Agency Act of 1949, as amended. The association of a number of these employees with the Agency was itself classified, and one of the doctors who was on his way to a very sensitive overseas assignment had to be recalled. Another doctor was also slated for such an assignment, which had to be held in abeyance. The widow's lawyer realized, on seeing the affidavits, that he had no case and advised her to withdraw the suit. A less ethical lawyer or a client bound on harrassment of CIA could have forced production of the affidavits in open court. This is just one of a number of cases which could be recited wherein the appearance of an employee or the production of information in judicial procedures resulted or could have resulted in security disclosures detrimental to the national security.

8. These actual cases indicate that once subject to the jurisdiction of a court, the Agency cannot guarantee protection of its sensitive information, particularly as to sources and methods. In a democratic society there will obviously be vital situations where the desirability for protecting sensitive intelligence information may, of necessity, be subordinated to the preservation of justice. On the other

hand, intelligence sources and methods should not be subjected to compromise, by design or otherwise, by a statute which would tend to encourage employees in sensitive positions to jeopardize the security system which they are working to protect. In point of fact, our concern lies not so much with the possibility of revelations by CIA employees but rather by the use which may be made of this administrative remedy by those who seek to destroy our national security systems. If such a statute were applied to CIA, the Agency would be faced with one of two alternatives: to remain silent in the face of charges and concede the merits, or to contest the merits and give away the information which the Director is charged by law to protect.

9. The fact is that although the CIA has some statutory authority (and a clear statutory responsibility) to protect its secret information, these mandates are not always enough when the Agency is brought into court. The obvious question then becomes how much further will the Agency be either harassed frivolously or sued in earnest and damaged under the provisions of S. 1035? It is apparent that while the cases to date show serious compromise of classified information under present protective statutes, the probable compromise in the future would be substantially more because of statutory authorizations of suits against the CIA.

10. The American Law Division's report concedes the possibility of conflict between Section 4 of S. 1035 and the Director's authority to terminate employees (50 U. S. C. 403(c)). That authority has been

upheld in a number of cases where the individual has sought to contest his termination, Kochan v. Dulles, Civ. No. 2728-58, D. C. D. C. (1959), and Torpats v. McCone, 300 F. 2d 914 (1962), U. S. Court of Appeals for D. C. Circuit. Particularly in the Torpats case the court refused to allow on the record information concerning intelligence operations which the plaintiff knew were classified. Our experience has shown however that a court proceeding cannot be confined solely to the matter of a single allegation, but that all sorts of peripheral and background matters are inevitably brought forward. S. 1035 would virtually force the courts to explore these areas publicly.

11. Possibly an even more clear-cut conflict involves section 201(c) of the CIA Retirement Act of 1964 (P. L. 88-643). That provision states that any determinations made by the Director authorized under the provisions of the CIA Retirement and Disability Act of 1964 "shall be deemed to be final and conclusive and not subject to review by any court." This provision was included in the law because the CIA retirement system covers those employees engaged in the most sensitive work of the Agency, primarily overseas activities, and the committees of the House and the Senate which held hearings on the Act realized the serious harm that would result from a public airing of any such cases.

12. As a hypothetical case, consider an employee who is mandatorily placed in a retired status under the CIA Retirement Act by the Director. Assume further that the employee brings an action in a district court

claiming that his retirement resulted from an interrogation concerning misconduct during which he requested and was refused counsel (section 1(k) of S. 1035). Under the provisions of section 4, the employee would be authorized to maintain the action, and the court would review in detail circumstances of the forced retirement. Such a review by the courts would directly conflict with section 201(c) of the CIA Retirement Act, and would result in a public airing of sensitive information which that section was designed to protect. Since S.1035 would be the later-enacted law, a court might hold that section 4 prevailed over the provisions of the CIA Retirement Act.

13. The requirement of presence of counsel or other person provided for in section 1(k) of S. 1035 would impose a particularly difficult dilemma. In effect, that section provides that before an employee could be subject to an interrogation which could lead to a disciplinary action, he has the right of counsel or other person of his choice. This statutory requirement could be extremely burdensome administratively. Of more importance, in the case of this Agency where classified information inevitably would be involved, there would be the requirement of investigation of the counsel or other person chosen. If for some reason the counsel or other person were determined to be untrustworthy to receive classified information, the Agency would be in a serious dilemma under S. 1035. On the one hand, it has the responsibility to protect intelligence sources and methods, and on

the other hand there is the requirement in S. 1035 that counsel or other person be present. In theory then, if the Agency refused to permit the presence of the person designated by the employee during the interrogation which involves the classified information, the complaining employee could allege violation of S. 1035 in deprivation of his rights. This is a serious infringement of the Agency's ability to protect classified information.

14. As indicated above, experience has shown that most every court action poses serious problems for the Agency. In order that the processes of law may go forward, there is some dilution of matters that should remain secret. The very concepts of S. 1035 in granting rights to employees and applicants to sue and to name individual employees of the Agency as defendants is at the outset inconsistent with the purposes behind the various exemptions granted the Agency to maintain secrecy, as well as the responsibility of the Director to protect intelligence sources and methods. These new rights granted employees of the Agency are furthermore inconsistent with the judicial concepts of protecting state secrets and the special nature of employment in secret activities. On balance, we believe that the desirability of protecting sensitive intelligence information far outweighs the need for relief of the type provided by S. 1035 to CIA employees who generally have accepted as a condition of employment the necessity for protecting that information. For these reasons, we believe that a complete exemption from this legislation for this Agency is essential.

privacy invasions, we are not trifling with the great constitutional truths which buttress our society. I believe we are.

Regrettably, it would appear that we have come far from the nature of the truths which we once thought important; but in the case of the polygraph, we have come not very far at all from the ancient methods of seeking the truth. It is not too far from the ancient trial of ordeal by fire or water to the concept of the "wiggle seat." Nor is there much difference between the polygraph and the old deception test used by the Indians. They thought that fear inhibited the secretion of saliva. To test his credibility, an accused was given rice to chew. If he could spit it out he was considered innocent; but if it stuck to his gums he was judged guilty.

What do polygraph techniques do to the concepts underlying the Fourth and Fifth Amendments? To the principles that there shall be no search and seizure without warrant, and that no man should be compelled to incriminate himself? Is there anything more destructive to our system of government than attempting to seize a man's innermost thoughts; compelling him to confess his beliefs, his religious practices, his every sin; requiring him to bare his soul to a machine in order to hold a job?

Hardened criminals are safeguarded in this area of the law, yet an applicant for Federal employment is not.

In the employment process, however, it is to the First Amendment that this twentieth century witchcraft does the most violence. That Amendment guarantees a citizen freedom from interference with his freedom of expression in his thoughts and beliefs. And it includes not only his right to express them but his right to keep silent about them. This is a crucial issue in a free society.

To condition a citizen's employment and his future job prospects on his submission to the pumping of his mind, his thoughts, and beliefs about personal matters unrelated to his duties, is to exercise a form of tyranny and control over his mind which is alien to a society of free men. It is to force conformity of his thought, speech and action to whatever subjective standards for conduct and thought might be held by a polygraph operator, or his company, or an agency official. It is to weaken the fabric of our entire society.

I submit that the Constitution can and does protect us from such incursions on our liberties.

EMPLOYMENT AS A PRIVILEGE

To say that employment is a privilege is to avoid the issue. For, as the Supreme Court has said, it does not matter whether or not there is a constitutional right to employment. The means and procedures employed by government should not be arbitrary.

CONSENT

Nor does it help to reply that a person "consents" to such an invasion of his liberty. Where the full force of government is behind the request, where he knows that great computer and data systems of government will retain forever his refusal to reply, or his answers to the queries, there is no free consent.

CONFIDENTIALITY OF RECORDS

Proponents argue that the records are confidential. It is no secret that his employment records, with all of the medical and security data, follow a man throughout his career. They are officially transmitted through the subterranean passages of our complex bureaucracy.

It was to prevent the practice of such tyrannies on Federal employees that I introduced my bill, S. 1035.

This bill is premised on the belief that just because he goes to work for government, the individual does not surrender his basic rights and liberties as a citizen. Nor does he surrender his right to a proper respect by his government for his privacy and other rights. S. 1035 is designed to prohibit unwarranted governmental invasions of employee privacy and is sponsored by 55 Members of the Senate. I am happy to report that it was approved by the Senate on September 18 by a vote of 79 to 4.

Section (f) of S. 1035 makes it unlawful for any officer of any Executive department or agency to require or request, or attempt to require or request, any civilian employee serving in the department or agency, or any person applying for employment in the Executive branch of the United States Government "to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters."

This measure is now pending in a Subcommittee of the House Post Office and Civil Service Committee under the Chairmanship of Congressman David Henderson. I am hopeful that the Congress will enact it promptly.

It is time we put a rein on the Federal Government's use of twentieth century witchcraft to find the truth. It is time the Federal Government was told what truths it should be seeking.

MEMORANDA CONCERNING THE EFFECT S. 1035 ON THE SECURITY AGENCIES

THE LIBRARY OF CONGRESS,
Washington, D.C., January 29, 1968.

To: Senate Subcommittee on Constitutional Rights.

From: American Law Division.

Subject: Effect of S. 1035 on C.I.A. Secrecy.

This is in response to your request for a consideration of the possible effects of S. 1035, to protect the privacy of governmental employees, upon the secrecy of an organization like the Central Intelligence Agency.

A number of statutory provisions are designed to allow the C.I.A. to maintain almost absolute secrecy about its operations and personnel. In 50 U.S.C. § 403(d)(3), the Director of C.I.A. is authorized, *inter alia*, to protect intelligence sources and methods from unauthorized disclosure. The Agency is exempted by 50 U.S.C. § 403g from the provisions of any law requiring the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by it. The Director is authorized, by 50 U.S.C. § 403(c), in his discretion, to terminate the employment of any officer or employee of the Agency whenever he deems it necessary or advisable in the interests of the United States.

Additionally, a series of criminal statutes prohibit unlawful disclosure of confidential information respecting the national defense. 18 U.S.C. §§ 793, 794, 798, 1905. And, finally, it appears that the C.I.A. requires of most if not all of their employees the execution of a secrecy agreement under which the employee swears to maintain in confidence information gained because of his employment and under which it is specifically recognized that an intentional or negligent violation of the agreement might subject the employee to prosecution under at least 18 U.S.C. §§ 793 and 794. See, *Heine* v. *Raus*, 261 F. Supp. 570, 571–572 (D.C.D.Md. 1966).

It is, of course, a rule of statutory construction that when two statutes conflict, the one later in date will govern. Therefore, if any provision of S. 1035, upon enactment, conflicts with any provision of the statutes listed above, S. 1035 would prevail. Would there be any conflict?

In order to protect the privacy of government employees, S. 1035 prohibits those in authority from engaging in certain activities in regard to government employees. The prohibited activities are (1) requiring the disclosure of one's race, religion, or national origin or that of his forebears, (2) indicating that the failure of one to attend any assemblage for the purpose of advising, instructing, or indoctrinating in the performance of or in regard to anything other than official duties will be noticed or acted upon, (3) requiring one to participate in activities or undertaking not relating to official duties, (4) requiring one to report on his activities or undertakings not related to his official duties, (5) requiring one to submit to any interrogation or examination designed to elicit information concerning such personal matters as relationships to other people, religious beliefs or practices in sexual matters, (6) requiring the taking of a polygraph test designed to elicit such personal information, (7) requiring one to participate in any way in the support of any person for political office of any political party, (8) requiring one to invest one's money in bonds or other obligations, (9) requiring one to disclose personal finances except in certain conflict of interest situations, (10) requiring or requesting one to participate in any investigation which could have disciplinary consequences without the presence of counsel or other persons of his choice, (11) and discharging or otherwise discriminating against one because of a refusal to comply with a request or demand made illegal by the bill.

Certain provisions of the bill recognize the existence of security interests necessitating deviation from the provisions of the bill. For example, a proviso permits inquiry into the national origin of an employee when deemed necessary or advisable to determine suitability for assignment to activities or undertaking related to the national security of the United States or to activities or undertakings of any nature outside the United States.

And Section 6 of the bill permits the requiring of polygraphing, personality testing or financial inquiry to elicit otherwise impermissible personal information of any employee of the C.I.A., the National Security Agency or the F.B.I. if the Director of the appropriate agency, or his designee, makes a personal finding with regard to each individual to be tested that such test is required to protect the national security.

Enforcement of the act would be placed in a Board of Employee Rights and hence to federal district court.

It appears then that the issue in any matter taken to the Board and to court subsequently would be whether some prohibition of the act had been violated. That is, the only relevant issue to be adjudicated would be whether, for example, someone had been requested or forced to take a polygraph test in regard to his sexual activities and had, perhaps, been discriminated against, by being fired, demoted, or somehow been retaliated against. Thus, it is difficult to see how an issue involving government secrets could be relevant to any determination the Board or court might be called up to make. One possibility might arise should the assignment of an operative be made to attend some assemblage or to take part in some activity be made and refused, for which refusal disciplinary action might follow.

It could be claimed by the affected employee that the requirement violated one or another provision of the act. But it will be noted that such assignments would violate the act only if not part of an employee's "official duties." Should determination of a possible violation depend upon whether or not the assignment involved "official duties," the precedents seem clear that to avoid disclosure of confidential or secret information a court will accept the certification by the Agency head to that effect. *Heine* v. *Raus*, supra 577–78; and, see *United States* v. *Reynolds*, 345 U.S. 1 (1953).

Thus, it would seem that issues involving governmental secrecy would not be relevant to issues before the Board and to a subsequent court. The issues would turn rather

upon whether specific provisions of S. 1035 had been violated.

In regard to the question of any conflict between present statutes and the proposed act, it appears that in all but one instance no conflict would occur. That instance arises with regard to 50 U.S.C. § 403(c), permitting the Director to terminate the employment of any employee or officer in his discretion. Under S. 1035, it would seem that the Director could not terminate employment for a refusal to carry out any request to do anything prohibited by the bill. He could not, for example, fire anyone for refusing to buy U.S. savings bonds. But, as has been noted, the issue would be simply whether this violation was the cause of dismissal or not; no secrets or confidences, no disclosure of any other reason, would have to be made known.

And, as already noted, there are exemptions. The Director may make inquiry of all sorts of personal information if he makes a finding that security requires it. No disclosure would be required of the reason for such a finding, if it became an issue before the Board, only disclosure that the finding had in fact been made.

In short, it appears that enactment of S. 1035 would create no conflict with present statutes nor change any of them, with the limited exception noted above.

JOHNNY H. KILLIAN,
Legislative Attorney.

COMMENTS BY SENATOR ERVIN: WHY THE CIA AND NSA SHOULD NOT BE EXCLUDED FROM THE PROVISIONS OF S. 1035, THE BILL TO PROTECT EMPLOYEE RIGHTS

The Central Intelligence Agency and the National Security Agency have asked that the guarantees in S. 1035 not be extended to their employees or to citizens who apply for employment with those agencies.

I see no practical or policy reasons for granting this request, and find no constitutional grounds for it. It is neither necessary nor reasonable.

The men who drafted the Constitution envisioned a government of laws, not of men. They meant that wherever our national boundaries should reach, there the controls established in the Constitution should apply to the actions of government. The guarantees of the amendments hammered out in the state constitutional conventions and in the meetings of the First Congress had no limitations. They were meant to apply to all Americans; not to all Americans with the exception of those employed by the Central Intelligence Agency and the National Security Agency.

My research has revealed no language in our Constitution which envisions enclaves in Washington, Langley, or Fort Meade, where no law governs the rights of citizens except that of the Director of an agency. Nor have I found any decision of the highest court in the land to support such a proposition.

Why, then, do these agencies want to be exempt from this bill?

Is it that, unbeknown to Congress, their mission is such that they must be able to order their employees to go out and lobby in their communities for open-housing legislation or take part in Great Society poverty programs?

Must they order them to go out and support organizations, paint fences, and hand out grass seeds, and then to come back and tell their supervisors what they did in their spare time and with their weekends?

Do they have occasion to require their employees to go out and work for the nomination or election of candidates for public office? Must they order them to attend meetings and fund-raising dinners for political parties in the United States?

Do they not know how to evaluate a secretary for employment without asking her how her bowels are, if she has diarrhea, if she loved her mother, if she goes to church every week, if she believes in God, if she believes in the second coming of Christ, if her sex life is satisfactory, if she has to urinate more often than other people, what she dreams about, and many other extraneous matters?

Why do these two agencies want the license to coerce their employees to contribute to charity and to buy bonds? The Subcommittee has received fearful telephone calls from employees stating that they were told their security clearances would be in jeopardy if they were not buying bonds, because it was an indication of their lack of patriotism.

Why should Congress grant these agencies the right to spend thousands of dollars to go around the country recruiting on college campuses, and the right to strap young applicants to machines and ask them questions about their family, and personal lives such as:

"When was the first time you had sexual relations with a woman?

"How many times have you had sexual intercourse?

"Have you ever engaged in homosexual activities?

"Have you ever engaged in sexual activities with an animal?

"When was the first time you had intercourse with your wife?

"Did you have intercourse with her before you were married?

"How many times?"

What an introduction to American government for these young people!

The Subcommittee has also received comments from a number of professors indicating the concern on their faculties that their students were being subjected to such practices.

That we are losing the talent of many qualified people who would otherwise choose to serve their government is illustrated by the following letter which was received by Representative Cornelius Gallagher, Chairman of the Special House Government Operations Committee investigation of invasions of privacy:

"I am now a Foreign Service Officer with the State Department and have been most favorably impressed with the Department's security measures.

"However, some years ago I was considered for employment by the CIA and in this connection had to take a polygraph test. I have never experienced a more humiliating situation, nor one which so totally violated both the legal and moral rights of the individual. In particular, I objected to the manner in which the person administering the test posed questions, drew subjective inferences and put my own moral beliefs up for justification. Suffice it to say that after a short time I was not a 'cooperative' subject, and the administrator said he couldn't make any sense from the polygraph and called in his superior, the 'deputy chief.'

"The deputy chief began in patronizing, reassuring tones to convince me that all he wanted was that I tell the truth. I then made a statement to the effect that I had gone to a Quaker school in Philadelphia, that I had been brought up at home and in school with certain moral beliefs and principles, that I had come to Washington from my University at the invitation of the CIA to apply for a position, not to have my statements of a personal and serious nature questioned not only as to their truth but by implication as to their correctness, and that I strongly objected to the way this test was being administered.

"The deputy chief gave me a wise smile and leaning forward said, 'Would you prefer that we used the thumb screws?' (!) I was shocked at this type of reasoning, and responded that I hardly thought it was a question of either polygraph or the thumb screws.

"This incident almost ended the deep desire I had for service in the American government, but fortunately I turned to the Foreign Service. But if it happened to me it must have happened and be happening to hundreds of other applicants for various Federal positions."

On the subject of polygraphs, the AFL-CIO in 1965 stated:

"The AFL-CIO Executive Council deplores the use of so-called 'lie detectors' in public and private employment. We object to the use of these devices, not only because their claims to reliability are dubious but because they infringe on the fundamental rights of American citizens to personal privacy. Neither the government nor private employers should be permitted to engage in this sort of police state surveillance of the lives of individual citizens."

Legislatures in 5 States and several cities have already outlawed these devices, and many unions have forced their elimination through collective bargaining. The Director of the Federal Bureau of Investigation has said they are unreliable for personnel purposes.

Why should Congress take a step backward by specifically authorizing their continued use on American citizens in these two agencies to ask about their sex lives, their religion, and their family relationships?

Bear in mind that, reprehensible as these lie detectors are, the bill only limits their use in certain areas, and the Director may still authorize their use if he thinks it necessary to protect the national security. Personally, I fear for the national security if its protection depends on the use of such devices.

Similarly, the question may be asked, why should these agencies force their employees to disclose all of their and their families' assets, creditors, personal and real property, unless they are responsible for handling money? Nevertheless, under the bill, the CIA and NSA have been granted the exemption they wished, to require their employees to disclose such information, if the Director says it is necessary to protect the national security. What more do they want?

Apparently, what they want is to stand above the law.

Taken all together, their arguments for complete exemption suggest only one conclusion—that they want the unmitigated right to kick Federal employees around, deny them respect for individual privacy and the basic rights which belong to every American regardless of the mission of his agency.

The idea that any government agency is entitled to the "total man" and to knowledge and control of all the details of his personal and community life unrelated to his employment or to law enforcement is more appropriate for totalitarian countries than for a society of free men. The basic premise of S. 1035 is that a man who works for the Federal government sells his services, not his soul.

REPLIES TO CENTRAL INTELLIGENCE AGENCY OBJECTIONS TO S. 1035, A BILL TO PROTECT THE RIGHTS OF FEDERAL EMPLOYEES

The Central Intelligence Agency, in a report which was stamped "secret," stated a number of objections to this bill. At the request of CIA representatives these were also explained to me at length in personal discussions. Their suggestions were carefully considered in Committee and the bill was carefully redrafted and amended to meet them. I believe the agency now has no legitimate complaint other than their natural lack of enthusiasm about being subject to any law. Following is a summary of their objections and the provisions in S. 1035 which meet them. I believe the same arguments will apply to other security positions in the Defense Department. Where those positions are not covered, the Subcommittee must make a policy decision that they are to Civil Service regulation